

The record considered by the Appeals Board is the same as that specifically set forth in the Award of the Administrative Law Judge. Also, the record includes a video tape taken of claimant by the respondent and insurance carrier.

STIPULATIONS

The stipulations of the parties are those set forth by the Administrative Law Judge.

ISSUES

The Administrative Law Judge found that claimant was entitled permanent partial general disability benefits based upon an impairment of function rating of fifty percent (50%). The claimant has requested the Appeals Board to review that finding. The issues now before the Appeals Board are:

- (1) Whether the Administrative Law Judge erred by considering the testimony contained in the preliminary hearing transcripts when their consideration was not addressed by the parties at the time that stipulations were taken.
- (2) Nature and extent of disability, if any.
- (3) Entitlement to future medical care and treatment.
- (4) Whether the medical expense incurred with Dr. Jackson should be paid by respondent.
- (5) Whether claimant is entitled to reimbursement for medical mileage expense.
- (6) The liability of respondent and insurance carrier for medical treatment pertaining to claimant's shoulder.
- (7) Whether a credit is applicable under the provisions of K.S.A. 44-510a.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds, as follows:

- (1) The Administrative Law Judge was correct in considering the testimony contained in the preliminary hearing transcripts notwithstanding the fact that the parties failed to address the matter at the time of taking stipulations. The Appeals Board adopts the analysis of the Administrative Law Judge pertaining to this issue. Also, see K.S.A. 44-552 that provides that all testimony introduced and proceedings had in hearings shall be taken down by a certified shorthand reporter and received as evidence when transcribed. Also, see Director's Rule 51-3-5 that provides that submission letters shall contain a list of the evidence to be considered by the Administrative Law Judge and that list shall include the dates and name of the Administrative Law Judge for each hearing held and a list of exhibits submitted at each hearing.

(2) The Award of Administrative Law Judge James R. Ward should be affirmed in all respects. The medical evidence is uncontroverted that claimant now has a fifty percent (50%) permanent partial impairment of function to his body as a whole as a result of the work-related injury to his back on September 14, 1984. The claimant has failed to prove that any work disability he has experienced as a result of the September 1984 accident exceeds the fifty percent (50%) permanent partial impairment of function rating.

The Appeals Board adopts the analysis of the facts and the law of the Administrative Law Judge as set forth in his Award pertaining to permanent partial general bodily disability benefits. The evidence is uncontroverted that claimant's job duties on the date of accident were primarily of a light-duty nature as he pumped gasoline and waited on cars in the service station portion of respondent's business operations, along with performing bench work and the duties of a parts man. Immediately prior to the accidental injury in September 1984, claimant occasionally performed other duties which were of a more physical nature; however, the evidence fails to indicate how often or the percentage of claimant's total job duties that claimant was required to perform these heavier activities. The evidence certainly fails to prove that as a result of his September 1984 injury claimant is now unable to perform greater than fifty percent (50%) of his job duties that he had on the date of the accident.

Claimant alleges that he is permanently, totally disabled from engaging in any substantial or gainful employment. The Appeals Board does not agree and finds the record void of any evidence which would tend to support that allegation. After recuperating from surgery, claimant returned to work for the respondent for a period of time performing lighter work duties. Claimant terminated his employment with respondent in order to start his own business of selling and repairing outdoor power equipment, and repairing vehicles and other equipment. Now self-employed, claimant performs sales, bench work, troubleshooting duties and other duties that do not violate his thirty (30) pound weight limit and his restrictions against bending, stooping and twisting. Although it is true that claimant experienced a significant back injury which required fusion, and may be required to undergo future surgery, claimant has established that he is certainly able to engage in substantial and gainful employment in spite of his restrictions and limitations. As claimant testified, his business now earns him more than he was making while working for the respondent, and his business operation needs to expand due to the demand for its services.

(3),(4),(5),(6),(7) The Appeals Board adopts the analysis and findings of fact and law of the Administrative Law Judge pertaining to the issues of future medical care and treatment, medical expense of Dr. Jackson, reimbursement of medical mileage, medical treatment for claimant's shoulder, and credit under the provisions of K.S.A. 44-510a. Pertaining to claimant's request for medical treatment of the shoulder, the record is devoid of evidence that relates a shoulder injury to the work-related accident in question or treatment of a shoulder injury.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge James R. Ward, dated February 24, 1994, should be, and hereby is, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of September, 1994.

BOARD MEMBER

BOARD MEMBER

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